IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

CRP. No. 67 of 2007

OP (T) NO. 406/2006 dated 15.12.2006 of DISTRICT COURT, KOZHIKODE

REVN. PETITIONER/ PETITIONER

NAFEESA BASHEER, W/O. K.V. BASHEER AHAMMED,
NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK.

BY ADV. SRI. C.P. MOHAMMED NIAS

RESPONDENTS/ RESPONDENTS

1. **DR. SURAJ, S/O. T. MADHAVAN NAIR,**
   MALAYIL HOUSE, PAYYOLI VILLAGE,
   KEEZHUR DESOM, KOYILANDY TALUK.

2. **A. ARUNA, D/O. NARAYANAN NAIR,**
   ALANKANDANDA, KACHERI AMSOM AND DESOM,
   KOZHIKODE TALUK.

3. **SIDDIQUE, S/O. ABDUL KARIM,**
   COOL TECH, CPM COMPLEX, OPP. KTC,
   KANNUR ROAD, CALICUT.

4. **CHANDRAKANTH. K.S.,**
   S/O. KESAV, MALABAR EYE HOSPITAL,
   EAST NADAKKAVU, CALICUT.

5. **DR. K. PAVITHRAN, SKIN AND DCD**
   SPECIALIST, RARICHAN ROAD, CALICUT.

6. **PILASSERY PRABHAKARAN,**
   S/O. GOPALAN, KOCHARI AMSOM AND DESOM,
   KOZHIKODE TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. SASIDHARAN NAMBIAR, J.

C.R.P NO. 67 OF 2007

Dated this the 22nd day of January, 2007.

O R D E R

Petitioner is plaintiff in O.S. No. 487/2004 on the file of Principal Munsiff Court-1, Kozhikode. She filed O.P. (T) No. 406/2006 before District Court, Kozhikode to transfer the suit to any other Munsiff Court at Kozhikode. It was dismissed by learned District Judge as per order dated 15.12.2006. Unsatisfied by the dismissal of application for transfer, this revision petition is filed under Section 115 of Code of Civil Procedure.

2. Learned counsel appearing for revision petitioner vehemently argued that, learned District Judge has not properly considered the transfer application. It was pointed out that the suit, OS.445/2003, was disposed of by the same Munsiff and even though there was no issue on the right of the way, a finding was entered by the learned Munsiff. Learned District Judge stated that to avoid conflicting decision, the case cannot be transferred and the result would be that learned Munsiff has to follow the very same decision taken in O.S. 445/2003 and therefore order of District Judge is illegal and is to be interfered with. It was also argued that attempt was not to protract the trial as even if the suit is transferred, the case could have been taken up without delay.

3. On hearing learned counsel appearing for petitioner, I do not find any illegality in the order passed by learned District Judge warranting interference in exercise of revisional jurisdiction of this Court. Learned District Judge has only stated that, chance for conflicting decision is to be avoided. It was represented before learned District Judge that, learned Munsiff had taken a view in the earlier suit and an identical question is to be decided. That observation was not made on the basis that Learned Munsiff has to follow the decision taken in the earlier suit. Even if in the earlier suit there was no issue regarding the right of way, that decision cannot be followed by the learned Munsiff in O.S. 487/2004 and on that ground the case is not to be transferred.

On hearing learned counsel appearing for petitioner, I find no reason or apprehension to hold that learned Munsiff will not decide O.S. 487/2004 and O.S.519/2004, except on merits and that too on the evidence. It is made clear that the learned Munsiff shall dispose of the suits untrammelled by whatever observations made in O.S. 445/2003.

Petition dismissed.

M. SASIDHARAN NAMBIAR, JUDGE.

smp